

HOUSE BILL 766

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Richard D. Vigil

AN ACT

RELATING TO PUBLIC SCHOOLS; DISTINGUISHING A STUDENT'S ACADEMIC PROFICIENCY FROM THE ADEQUATE YEARLY PROGRESS OF PUBLIC SCHOOLS AND SCHOOL DISTRICTS; CONFORMING RANKINGS OF SCHOOLS IN NEED OF IMPROVEMENT WITH FEDERAL REQUIREMENTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 22-1-2 NMSA 1978 (being Laws 2003, Chapter 153, Section 3, as amended by Laws 2005, Chapter 313, Section 3 and by Laws 2005, Chapter 315, Section 1) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "adequate yearly progress" means the measure adopted by the department based on federal requirements to

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1 assess the progress that [~~a student~~] a public school or school
2 district or the state makes toward improving student
3 achievement;

4 B. "commission" means the public education
5 commission;

6 C. "department" means the public education
7 department;

8 D. "forty-day report" means the report of qualified
9 student membership of each school district and of those
10 eligible to be qualified students but enrolled in a private
11 school or a home school for the first forty days of school;

12 E. "home school" means the operation by the parent
13 of a school-age person of a home study program of instruction
14 that provides a basic academic educational program, including
15 reading, language arts, mathematics, social studies and
16 science;

17 F. "instructional support provider" means a person
18 who is employed to support the instructional program of a
19 school district, including educational assistant, school
20 counselor, social worker, school nurse, speech-language
21 pathologist, psychologist, physical therapist, occupational
22 therapist, recreational therapist, interpreter for the deaf and
23 diagnostician;

24 G. "licensed school employee" means teachers,
25 school administrators and instructional support providers;

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1 H. "local school board" means the policy-setting
2 body of a school district;

3 I. "local superintendent" means the chief executive
4 officer of a school district;

5 J. "parent" includes a guardian or other person
6 having custody and control of a school-age person;

7 K. "private school" means a school, other than a
8 home school, that offers on-site programs of instruction and
9 that is not under the control, supervision or management of a
10 local school board;

11 L. "public school" means that part of a school
12 district that is a single attendance center in which
13 instruction is offered by one or more teachers and is
14 discernible as a building or group of buildings generally
15 recognized as either an elementary, middle, junior high or high
16 school or any combination of those and includes a charter
17 school;

18 M. "school" means a supervised program of
19 instruction designed to educate a student in a particular
20 place, manner and subject area;

21 N. "school administrator" means a person licensed
22 to administer in a school district and includes school
23 principals and central district administrators;

24 O. "school-age person" means a person who is at
25 least five years of age prior to 12:01 a.m. on September 1 of

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1 the school year and who has not received a high school diploma
2 or its equivalent. A maximum age of twenty-one shall be used
3 for a person who is classified as special education membership
4 as defined in Section 22-8-21 NMSA 1978 or as a resident of a
5 state institution;

6 P. "school building" means a public school, an
7 administration building and related school structures or
8 facilities, including teacher housing, that is owned, acquired
9 or constructed by the school district as necessary to carry out
10 the functions of the school district;

11 Q. "school bus private owner" means a person, other
12 than a school district, the department, the state or any other
13 political subdivision of the state, that owns a school bus;

14 R. "school district" means an area of land
15 established as a political subdivision of the state for the
16 administration of public schools and segregated geographically
17 for taxation and bonding purposes;

18 S. "school employee" includes licensed and
19 nonlicensed employees of a school district;

20 T. "school principal" means the chief instructional
21 leader and administrative head of a public school;

22 U. "school year" means the total number of contract
23 days offered by public schools in a school district during a
24 period of twelve consecutive months;

25 V. "secretary" means the secretary of public

1 education;

2 W. "state agency" or "state institution" means the
3 New Mexico military institute, New Mexico school for the blind
4 and visually impaired, New Mexico school for the deaf, New
5 Mexico boys' school, New Mexico girls' school, New Mexico youth
6 diagnostic and development center, Sequoyah adolescent
7 treatment center, Carrie Tingley crippled children's hospital,
8 New Mexico behavioral health institute at Las Vegas and any
9 other state agency responsible for educating resident children;

10 X. "state educational institution" means an
11 institution enumerated in Article 12, Section 11 of the
12 constitution of New Mexico;

13 Y. "substitute teacher" means a person who holds a
14 certificate to substitute for a teacher in the classroom;

15 Z. "teacher" means a person who holds a level one,
16 two or three-A license and whose primary duty is classroom
17 instruction or the supervision, below the school principal
18 level, of an instructional program or whose duties include
19 curriculum development, peer intervention, peer coaching or
20 mentoring or serving as a resource teacher for other teachers;

21 AA. "certified school instructor" means a teacher
22 or instructional support provider; and

23 BB. "certified school employee" or "certified
24 school personnel" means a licensed school employee."

25 Section 2. Section 22-2C-4 NMSA 1978 (being Laws 2003,

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1 Chapter 153, Section 13, as amended) is amended to read:

2 "22-2C-4. STATEWIDE ASSESSMENT AND ACCOUNTABILITY
3 SYSTEM--INDICATORS--REQUIRED TESTS--ALTERNATIVE TESTS--LIMITS
4 ON ALTERNATIVES TO ENGLISH LANGUAGE READING TEST.--

5 A. The department shall establish a statewide
6 assessment and accountability system that is aligned with the
7 state academic content and performance standards and that
8 measures adequate yearly progress for each [~~student~~] public
9 school and school district. Adequate yearly progress shall be
10 determined primarily by student academic achievement, as
11 demonstrated by statewide standards-based academic performance
12 tests; however, the department may include other indicators of
13 adequate yearly progress, including graduation rates for high
14 schools and attendance for elementary and middle schools.

15 B. The academic assessment program for adequate
16 yearly progress shall test student achievement as follows by
17 the school year indicated:

18 (1) for grades three through nine and for
19 grade eleven, standards-based academic performance tests in
20 mathematics, reading and language arts and social studies by
21 the 2005-2006 school year; provided that testing in ninth grade
22 and testing in social studies shall not occur until the
23 legislature has provided funding for test development and
24 implementation;

25 (2) for grades three through nine, standards-

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1 based academic performance writing assessment with the writing
2 assessment scoring criteria applied to the extended response
3 writing portions of the language arts criterion-referenced
4 tests by the 2005-2006 school year; and

5 (3) for one of grades three through five and
6 six through nine and for grade eleven, standards-based academic
7 performance tests in science by the 2007-2008 school year.

8 C. The department shall involve appropriate
9 licensed school employees in the development of the standards-
10 based academic performance tests.

11 D. All students shall participate in the academic
12 assessment program. The department shall adopt standards for
13 reasonable accommodations in academic testing for students with
14 disabilities and limited English proficiency, including when
15 and how accommodations may be applied. The legislative
16 education study committee shall review the standards prior to
17 adoption by the department.

18 E. Students who have been determined to be limited
19 English proficient may be allowed to take the standards-based
20 academic performance test in their primary language. A student
21 who has attended school for three consecutive years in the
22 United States shall participate in the English language reading
23 test unless granted a waiver by the department based on
24 criteria established by the department. An English language
25 reading test waiver may be granted only for a maximum of two

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1 additional years and only on a case-by-case basis."

2 Section 3. Section 22-2C-6 NMSA 1978 (being Laws 1986,
3 Chapter 33, Section 7, as amended) is amended to read:

4 "22-2C-6. REMEDIATION PROGRAMS--PROMOTION POLICIES--
5 RESTRICTIONS.--

6 A. Remediation programs, academic improvement
7 programs and promotion policies shall be aligned with
8 alternative school-district-determined assessment results and
9 requirements of the assessment and accountability program.

10 B. Local school boards shall approve school-
11 district-developed remediation programs and academic
12 improvement programs to provide special instructional
13 assistance to students in grades one through eight who ~~[fail to~~
14 ~~attain adequate yearly progress]~~ are not academically
15 proficient for their grade level as determined by alternative
16 school-district-determined assessment results. The cost of
17 remediation programs and academic improvement programs shall be
18 borne by the school district. Remediation programs and
19 academic improvement programs shall be incorporated into the
20 school district's educational plan for student success and
21 filed with the department.

22 C. The cost of summer and extended day remediation
23 programs and academic improvement programs offered in grades
24 nine through twelve shall be borne by the parent; however,
25 where parents are determined to be indigent according to

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1 guidelines established by the [~~state board~~] department, the
2 school district shall bear those costs.

3 D. Diagnosis of weaknesses identified by a
4 student's academic achievement may serve as criteria in
5 assessing the need for remedial programs or retention.

6 E. A parent shall be notified no later than the end
7 of the second grading period that [~~his~~] the parent's child is
8 [~~failing to make adequate yearly progress~~] not academically
9 proficient, and a conference consisting of the parent and the
10 teacher shall be held to discuss possible remediation programs
11 available to assist the student in [~~attaining adequate yearly~~
12 ~~progress~~] becoming academically proficient. Specific academic
13 deficiencies and remediation strategies shall be explained to
14 the student's parent and a written plan developed containing
15 timelines, academic expectations and the measurements to be
16 used to verify that a student has overcome [~~his~~] academic
17 deficiencies. Remediation programs and academic improvement
18 programs include tutoring, extended day or week programs,
19 summer programs and other research-based models for student
20 improvement.

21 F. At the end of grades one through seven, three
22 options are available, dependent on a student's [~~adequate~~
23 ~~yearly progress~~] academic proficiency:

24 (1) the student [~~has made adequate yearly~~
25 ~~progress~~] is academically proficient and shall enter the next

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1 higher grade;

2 (2) the student [~~has not made adequate yearly~~
3 ~~progress~~] is not academically proficient and shall participate
4 in the required level of remediation. Upon certification by
5 the school district that the student [~~has made adequate yearly~~
6 ~~progress, he~~] is academically proficient, the student shall
7 enter the next higher grade; or

8 (3) the student [~~has not made adequate yearly~~
9 ~~progress upon~~] is not academically proficient after completion
10 of the prescribed remediation program and upon the
11 recommendation of the teacher and school principal shall either
12 be:

13 (a) retained in the same grade for no
14 more than one school year with an academic improvement plan
15 developed by the student assistance team in order to meet
16 [~~adequate yearly progress~~] academic proficiency, at which time
17 the student shall enter the next higher grade; or

18 (b) promoted to the next grade if the
19 parent refuses to allow [~~his~~] the child to be retained pursuant
20 to Subparagraph (a) of this paragraph. In this case, the
21 parent shall sign a waiver indicating [~~his~~] the parent's desire
22 that the student be promoted to the next higher grade with an
23 academic improvement plan designed to address specific academic
24 deficiencies. The academic improvement plan shall be developed
25 by the student assistance team outlining timelines and

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1 monitoring activities to ensure progress toward overcoming
2 those academic deficiencies. Students failing to [~~make~~
3 ~~adequate yearly progress~~] become academically proficient at the
4 end of that year shall then be retained in the same grade for
5 no more than one year in order to have additional time to
6 master the required content standards.

7 G. At the end of the eighth grade, a student who
8 [~~fails to make adequate yearly progress~~] is not academically
9 proficient shall be retained in the eighth grade for no more
10 than one school year to [~~make adequate yearly progress~~] become
11 academically proficient or if the student assistance team
12 determines that retention of the student in the eighth grade
13 will not assist the student [~~make adequate yearly progress~~] to
14 become academically proficient, the team shall design a high
15 school graduation plan to meet the student's needs for entry
16 into the work force or a post-secondary educational
17 institution. If a student is retained in the eighth grade, the
18 student assistance team shall develop a specific academic
19 improvement plan that clearly delineates the student's academic
20 deficiencies and prescribes a specific remediation plan to
21 address those academic deficiencies.

22 H. A student who fails to [~~make adequate yearly~~
23 ~~progress~~] show academic proficiency for two successive school
24 years shall be referred to the student assistance team for
25 placement in an alternative program designed by the school

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1 district. Alternative program plans shall be filed with the
2 department.

3 I. Promotion and retention decisions affecting a
4 student enrolled in special education shall be made in
5 accordance with the provisions of the individual educational
6 plan established for that student.

7 J. For the purposes of this section:

8 (1) "academic improvement plan" means a
9 written document developed by the student assistance team that
10 describes the specific content standards required for a certain
11 grade level that a student has not achieved and that prescribes
12 specific remediation programs such as summer school, extended
13 day or week school and tutoring;

14 (2) "alternative school-district-determined
15 assessment results" means the results obtained from student
16 assessments developed by a local school board and conducted at
17 an elementary grade level or middle school level;

18 (3) "educational plan for student success"
19 means a student-centered tool developed to define the role of
20 the academic improvement plan within the school district that
21 addresses methods to improve a student's learning and success
22 in school and that identifies specific measures of a student's
23 progress; and

24 (4) "student assistance team" means a group
25 consisting of a student's:

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- 1 (a) teacher;
- 2 (b) school counselor;
- 3 (c) school administrator; and
- 4 (d) parent."

5 Section 4. Section 22-2C-7 NMSA 1978 (being Laws 2003,
6 Chapter 153, Section 16) is amended to read:

7 "22-2C-7. ADEQUATE YEARLY PROGRESS--SCHOOL IMPROVEMENT
8 PLANS--CORRECTIVE ACTION--RESTRUCTURING.--

9 A. A public school that fails to make adequate
10 yearly progress for two consecutive school years shall be
11 [~~ranked~~] identified as a school that needs improvement. A
12 school that needs improvement shall be ranked as:

- 13 (1) school improvement 1;
- 14 (2) school improvement 2;
- 15 (3) corrective action;
- 16 (4) restructuring 1; or
- 17 (5) restructuring 2.

18 B. Within ninety days of being notified that a
19 public school within the school district has been [~~ranked~~]
20 identified as a [~~public~~] school that needs improvement, the
21 school district shall submit an improvement plan for that
22 public school to the department. In developing the improvement
23 plan, the local superintendent, the president of the local
24 school board and the school principal of the public school that
25 needs improvement shall hold a public meeting to inform parents

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1 and the public of the public school's rank. The meeting shall
2 be used to elicit suggestions from parents and the public on
3 how to improve the public school. After the public meeting,
4 the school district shall develop the public school's
5 improvement plan, and the local school board shall approve the
6 improvement plan before it is submitted to the department. The
7 improvement plan shall be approved by the department within
8 thirty days of its submission.

9 C. The improvement plan shall include:

10 (1) documentation of performance measures in
11 which the public school failed to make adequate yearly
12 progress;

13 (2) measurable objectives to indicate the
14 action that will be taken to address failed measures;

15 (3) benchmarks to be used to indicate progress
16 in meeting academic content and performance standards;

17 (4) an estimate of the time and the resources
18 needed to achieve each objective in the improvement plan;

19 (5) the support services that shall be
20 provided to students; ~~and~~

21 (6) applications for federal and state funds;

22 and

23 ~~(6)~~ (7) any other information that the
24 public school that needs improvement, the local superintendent,
25 the local school board or the department deems necessary.

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1 D. A public school that needs improvement may apply
2 to the department for financial or other assistance in
3 accordance with the improvement plan. The public school shall
4 make application for assistance substantially in the form
5 required by the department. The department shall evaluate
6 applications for assistance and may recommend changes to an
7 application or to an improvement plan if warranted by the final
8 application. The department shall consider innovative methods
9 to assist the public school in meeting its improvement plan,
10 including department or other school employees [~~to serve~~]
11 serving as a mobile assistance team to provide administrative,
12 classroom, human resource and other assistance to the public
13 school that needs improvement as needed and as provided in
14 applications approved by the department.

15 E. [~~If a~~] "School improvement 1" means the public
16 school [~~fails~~] has failed to make adequate yearly progress for
17 two [~~or more~~] consecutive school years [~~it~~]. A school
18 improvement 1 public school shall provide transportation or pay
19 the cost of transportation, within available funds, for
20 students who choose to enroll in a higher ranked public school.

21 F. [~~If a~~] "School improvement 2" means the public
22 school [~~fails~~] has failed to make adequate yearly progress for
23 three [~~or more~~] consecutive school years [~~it~~] unless delayed in
24 school improvement 1. A school improvement 2 public school
25 shall provide supplemental services, including after-school

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1 programs, tutoring and summer services, within available funds.
2 [~~G.~~] The [~~state board~~] department shall adopt rules that govern
3 the priority for students for whom supplemental services shall
4 be provided and for students for whom transportation costs are
5 paid.

6 [~~H. If a~~] G. "Corrective action" means the public
7 school [~~fails~~] has failed to make adequate yearly progress for
8 four consecutive school years [~~it shall be ranked as a public~~
9 ~~school subject to corrective action and~~] unless delayed in
10 school improvement 2. The school district, in conjunction with
11 the department, shall take one or more of the following actions
12 at a corrective action school in addition to earlier
13 improvements:

- 14 (1) replace staff as allowed by law;
- 15 (2) implement a new curriculum;
- 16 (3) decrease management authority of the
17 public school;
- 18 (4) appoint an outside expert to advise the
19 public school;
- 20 (5) extend the school day or year; or
- 21 (6) change the public school's internal
22 organizational structure.

23 [~~H. If a~~] H. "Restructuring 1" means the public
24 school [~~fails~~] has failed to make adequate yearly progress for
25 five consecutive school years unless delayed in corrective

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1 action. A school ranked as restructuring 1 shall continue the
2 improvement measures implemented in corrective action and begin
3 planning for restructuring of the public school if it fails to
4 make adequate yearly progress in the sixth year.

5 I. "Restructuring 2" means the public school has
6 failed to make adequate yearly progress for six consecutive
7 years. The school district, in conjunction with the
8 department, shall take one or more of the following actions in
9 addition to other improvements at the restructuring 2 school:

10 (1) reopen the public school as a charter
11 school;

12 (2) replace all or most of the staff as
13 allowed by law;

14 (3) turn over the management of the public
15 school to the department; or

16 (4) make other governance changes.

17 J. A school district that [~~fails~~] has failed to
18 make adequate yearly progress for two consecutive school years
19 may be subject to the same requirements as a [~~public school~~
20 ~~that needs improvement or the same requirements as a~~] public
21 school subject to corrective action, as determined by the
22 [~~state board~~] department. Supplemental services to school
23 district students shall be provided by another school district
24 or by one or more state-approved private organizations as
25 determined by the department. A school district that fails to

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1 make adequate yearly progress for four consecutive school years
2 shall be subject to corrective action.

3 K. The state or a school district shall not enter
4 into management contracts with private entities for the
5 management of a public school or a school district subject to
6 corrective action.

7 L. If a public school that is identified as a
8 school that needs improvement makes adequate yearly progress in
9 the second year that it is ranked as school improvement 1,
10 school improvement 2, corrective action or restructuring 1,
11 movement to the next level of school improvement shall be
12 delayed. If the public school again makes adequate yearly
13 progress in the third year that it is ranked as school
14 improvement 1, school improvement 2, corrective action or
15 restructuring 1, it shall be removed from the list of schools
16 in need of improvement."